IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 2959 OF 2003
IN
FIRST APPEAL (ST) NO. 16628 OF 2002

1. Sou. Kantabai w/o
Basavraj Pattanshetti; & ors. ... Applicants

V/s

1. Pukhraj Satidan Ostwal; & ors. ... Respondents

Shri S.V. Sakhare for the applicants.

CORAM: P.V. KAKADE, J.

DATED: 1ST NOV., 2004.

P.C.:

1. This is an application filed by the applicants seeking exemption from paying Court fees in the present first appeal in view of the then prevailing notification dated 1.10.1994 issued by the State Government. In this matter, this Court by order dated 9.7.2004 sought report from the Registrar (Judicial) as regards the entitlement of the application to exempt under notification dated 1.10.1994. Report is duly received.

2. It is the case of the applicants that the plaintiff/respondent No.1 had filed appeal against the

judgment and order passed by the lower Court in R.C.Suit No. 142 of 1992 in the Court of Civil Judge, Jr.Divn., Solapur for the declaration that the property which he has purchased from the defendants 1 & 2 by virtue of judgmentand decree in R.C.A. No. 160 of 1986 arising out of R.C.S. No. 344 of 1976 filed by the present applicants. The applicants further submitted that in the year 1999, the said R.C.S. No. 142 of 1992 was converted into Special Civil Suit No. 338 of 1999. The said suit came to be transferred to the Civil Judge, Sr. Divn., Solapur for trial. It is the case of the applicants that in the year 1994, the Government of Maharashtra announced a policy with a view to promote the welfare of the women under Sec.46 of the Bombay Court Fees Act, 1959, the State Government issued notification dated 1.10.1994 for exemption of Court fees for women litigants. By virtue of the said notification, the State Government remitted the fees paid by the women litigants on any of the plaints, applications, petitions, memos and appeals or any other documents specified in first and second schedule to the said Act to be filed in any Civil, Family or Criminal Courts in respect of cases relating to (a) maintenance; (b) property rights; (c) violence and (d) divorce. The said notification dated 1.10.1994 was amended by further

notification dated 23.3.2000 in respect of the expression "property disputes" shall mean "property disputes arising out of and concerned matrimonial matters". Therefore, from the date of amended notification, it is clear that women would be exempted from paying the Court fees who are involved in property disputes only concerning the matrimonial matters. The applicants have therefore submitted that this amended notification of the year 2002 would not be applicable to them because the original suit against which the present appeal is filed, was filed in the year 1992 and the present appeal being nothing but continuation of original suit, would be governed by pre-amendment provisions which prevailed in the year 1994. In other words, they are seeking exemption from paying Court fees on the ground that the dispute regarding property is pending in the Court since the year 1992 and, therefore, amended notification of the year 2000 is not applicable to them and hence the application.

3. I have heard the learned counsel for the applicants.

The suit was filed on 7.2.1992 for declaration of property and the said suit was decided on 7.11.2001 against which the first appeal filed on 18.4.2002 i.e.

after the amended notification came into being on 23.3.2000. This Court had already concluded the issue. In the case of **Jyoti S. Doshi v/s Hindustan Hosiery Mills, reported in 2000 (4) Mh.L,J. 228,** holding that matters filed on or after 23.3.2000 will be governed under the notification prevailing on that date. Therefore, since the present appeal is filed on 18.4.2002 i.e. after the Govt. Notification dated 23.3.2000, the applicants, though women litigants, would be liable to pay full Court fee in the said matter.

In view of this position, the civil application deserves to be dismissed and stands dismissed with no order as to costs.

The applicants are directed to pay the requisite Court fee as per law.

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